IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Crl.Rev.Pet.No. 612 of 1999()

CRA.76/1998 of ADDL.SESSIONS COURT, PARAVUR
CC.928/1994 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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REVN. PETITIONER:

KOCHUMUHAMMED @ KUNJUMUHAMMED,
S/O.KUNJIN PILLAI, KAROLY VEEDU,
PERUMANIKARA, ARACKAPPADY VILLAGE.

BY ADV. SRI.S.MOHAMMED AL RAFI

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.2737/1999 IN CRL.R.P. NO.612/1999

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

16/08/2007

\\TRUE COPY//

K.R.UDAYABHANU, J.

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Crl.R.P.No.612 of 1999

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Dated this the 16th day of August, 2007

O R D E R

The revision petitioner is the accused who stands convicted for the offences under Sections 457, 380 and 461 I.P.C and sentenced to undergo rigorous imprisonment for one year each.

2. The prosecution case is that on 13/11/1988 at about 11 p.m., the accused committed house breaking by removing the lock of the kitchen room of the house of PW.1 with a crowbar and managed to have access to the bedroom and committed theft of gold chain weighing 13.350 grams in mango fashion worth Rs.3600/-; bracelet in which the name 'shamna' is engraved, weighing 6.650 grams worth Rs.2400/-; one pair of studs and jimiky weighing 6 grams worth Rs.1800/-; one stud weighing 2 grams worth Rs.600/-; one ring weighing one gram worth Rs.300/- and currency notes amounting to Rs.8500/-.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 14 and Exts.P1 to P5 and MOs.1 to 3. It is the case of the counsel for the revision petitioner that the recovery has been effected after about six years of the incident and that the accused was allegedly arrested on 11 a.m at Aluva and Section 27 recovery has been effected at 6 p.m from Chirayinkeezhu. It is also pointed out that the accused and the de facto complainant are relatives. It is also seen that PW.3, the person from whom the recovery is effected is also closely related to the accused. It is a trumped up case as the de facto complainant and his brothers were having litigations in between with respect to the properties inherited and that the accused is the brother-in-law of the brother of the de facto complainant. So far as Section 27 recovery is concerned, it is further pointed out that PW.3, from whose house allegedly, MOs.1 and 2 were recovered and PWs.4 and 5, the witnesses to the recovery have testified that PW.3 was made to remain in the police station and PWs.4 and 5, the sons were directed to get the ornaments manufactured and produced at the police station and only after producing the above MOs.1 and 2 that PW.3 was released. In support of the above, it is also pointed out

that in Ext.P1 F.I.S the engraving in the bracelet is mentioned as Shamna, whereas the writing in MO.2 is Sahana. It is further pointed out that PWs.3, 4 and 5 have not been treated as hostile or cross-examined. PW.6, the witnesses to the recovery mahazar, who is also the appraiser has also stated that he has signed in Ext.P2 recovery mahazar at Aluva police station. I find that the above aspects of the case render the prosecution version suspicious. The accused is entitled to the benefit of doubt. Hence, the conviction and sentence is set aside. The accused is acquitted. The order of the trial court that MOs.1 and 2 will be returned to PW.1 is not interfered with.

The Criminal revision petition is allowed as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.612 of 1999

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O R D E R

16th August, 2007